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HARDY AND CAREY
ATTORNEYS AT LAW
111 VETERANS BOULEVARD
METAIRIE, LOUISIANA 70005

ASHTON R. HARDY
BRADFORD D. CAREY
MARJORIE R. ESMAN

TELEPHONE: 504-830-4646
TELEFAX 504-830-4659
OUR FILE NO.

BY HAND

DOCKET FILE COPY ORIGINAL

May 21, 1993

No. 2046.002

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

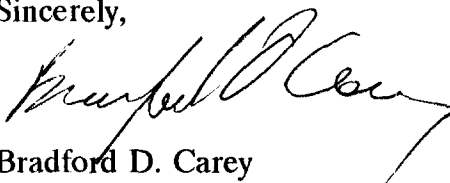
RE: MM Docket No. 93-51
Applications of Martha J. Huber, et al, for
Construction Permit for FM Station, Channel 234A
New Albany, Indiana

Dear Ms. Searcy:

Transmitted herewith for filing is an original and six (6) copies of a *Second Motion of Midamerica to Enlarge Issues Against Martha J. Huber* filed on behalf of Midamerica Electronics Services, Inc., in the above referenced matter.

Should the commission have any questions, kindly direct them to the undersigned.

Sincerely,



Bradford D. Carey

BDC/vmm
Enclosures

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MAY 24 1993

Before The

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**Federal Communications Commission**

Washington, D.C. 20554

In re Applications of)	
)	
MARTHA J. HUBER, <i>et al.</i> ,)	
)	
For a Construction Permit for a)	MM Docket No.
New FM Station on Channel 234A)	<u>93-51</u>
in New Albany, Indiana)	

TO: The Honorable Administrative Law Judge Sippel

SECOND MOTION OF MIDAMERICA TO ENLARGE ISSUES**AGAINST MARTHA J. HUBER**

Midamerica Electronics Service, Inc., by Counsel hereby moves to enlarge the issues in this proceeding with respect to Martha J. Huber with the addition of a Section 1.65 "failure to report" issue and a financial qualifications issue.¹

I. BACKGROUND

Huber's application lists a \$350,000 loan from Citizens Fidelity Bank and Trust Company, Indiana (hereinafter sometimes referred to as "CF") as her sole source of financing. (Official Notice Requested of page 6, of Huber's Application, FCC Form 301, a copy of which is annexed hereto as Exhibit 1). In responding to various motions to enlarge the issues against her, Martha J. Huber submitted a letter,

¹Motions to enlarge the issues against Huber on, *inter alia*, financial qualifications grounds are already pending. If a general financial qualifications issue has already been added against Huber at the time this Motion is acted upon, only a section 1.65 issue need be added.

dated may 5, 1993, purportedly written by the bank officer who had apparently authored the letter on which Huber is relying to establish her financial qualifications.² (A copy is annexed hereto as Exhibit 2; Official Notice Requested).

II. HUBER HAS NEVER AMENDED HER APPLICATION TO REPORT
A CHANGE IN HER FINANCIAL SOURCE.

Huber's original letter was written on CF stationary³ under date of October

20-1091 A-1 II Huber's application lists her sole source of funds as being a \$250,000

contractually assumed from CF, if any, by PNC Bank should be well documented. (Huber produced no document assigning from CF to PNC any commitment CF had made to Huber; nor did she produce any agreement of PNC to assume any such loan commitment that might have been made by CF⁵). Whether or not PNC is committed to lend Huber funds and whether or not CF was committed to lend Huber funds and whether or not any commitment of CF lapsed in the apparent transfer of certain business to PNC are substantial and material issues of fact that warrant exploration at hearing.

An examination of the Commission's records and Huber's own pleadings demonstrates that Huber can no longer rely on the CF loan listed in its application and Huber knows this. Huber apparently still has not reported to the Commission the fact that CF no longer exists, even though it may have been absorbed by another bank. This constitutes a serious failure of Huber to comply with section 1.65 of the Commission's Rules., which provides in pertinent part that:

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except where paragraph (b) applies, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Except where paragraph (b) applies, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any

⁵The May 5, 1993 PNC letter disclaims any "commitment". While there need not be a contractually binding commitment, the source does have to be committed to the deal, future capital (etc) permitting.

event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with §1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

Midamerica respectfully submits that Huber has not complied with the Commission's Rule. The addition of a section 1.65 failure to report issue is appropriate. And, since Huber's already tenuous bank letter is further eroded, if a general financial qualifications issue has not already been added, the addition of one is now appropriate.

III. THE ISSUES TO BE ADDED

Wherefore, premises considered, Midamerica urges that the following issues be added with respect to Martha J. Huber:

To determine whether Martha J. Huber violated section 1.65 of the Commission's Rules by failing to notify the Commission that Citizen's Fidelity Bank, Indiana, a loan from which Huber has purportedly been relying on, no longer is in business;

To determine whether Martha J. Huber is financially qualified;
and,

To determine whether, in light of the evidence adduced, whether Martha J. Huber has the qualifications to be a Commission licensee.⁶

Respectfully Submitted,

MOTION FOR PRODUCTION OF DOCUMENTS

Midamerica Electronics Service , Inc. by Counsel, hereby requests that if the requested issues are added against Martha J. Huber, she produce the following documents within such time as may be set by the Presiding Officer or, if none be set, within ten days of the release of his Order adding the requested issues:

1. All documents prepared by or for Martha J. Huber for, or possibly for, delivery to or review by Citizen's Fidelity Bank, Indiana ("CF") in connection with her application for a construction permit; and, all documents she received from CF in connection with or related to her application or the financing of her proposed station;
2. All documents that identify PNC Bank as the successor (if it was or is the successor) to CF and the date on which:
 - (a) such change occurred; and,
 - (b) the date on which Huber or her husband first became aware of any such change or succession (*e.g.* from CF to PNC)
3. All documents indicating whether CF assigned to PNC and PNC assumed any loan commitment or understanding regarding Huber's application.
4. All documents relating to Huber's relationship(s) with Citizens Fidelity Bank, Indiana and PNC Bank since 24 months before she filed her application for a construction permit

Midamerica anticipates taking the deposition of the person who executed Huber's bank letter, Leo Tierney, and other officials of PNC Bank, and to the extent that they may be identified and located, the former Citizens Fidelity Bank on various

matters related to Huber's financial qualifications, including the assignment and assumption, if any, of any loan commitment to Huber.

Midamerica also contemplates seeking a subpoena duces tecum to obtain from PNC bank pertinent documents, including all documents related to the assignment/assumption at the Closing of any sale of CF assets to PNC of any loan commitment to Huber and documents in PNC's possession as to when Huber first knew that CF was no longer in business.

CERTIFICATE OF SERVICE

I, Valerie McGuire, a secretary for the law firm of Hardy & Carey, do hereby certify that a copy of the above and foregoing document has been served on counsel for all parties to this proceeding, by mailing a copy of same via U.S. Mail, postage prepaid, this 21st day of May, 1993, addressed to the following:

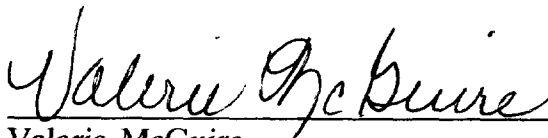
Honorable Richard Sippel*
Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20054

James Shook, Esq.*
Federal Communications Commission
Hearing Branch
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Morton L. Berfield, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036
Counsel for Martha J. Huber

John Wells King, Esq.
Haley, Bader & Potts
4350 N. Fairfax Drive, Suite 90
Arlington, VA 22203-1633
Counsel for Rita Reyna Brent

Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W.
Washington, D.C. 20006
Counsel for Station Communications, Inc.



Valerie McGuire

* By Hand